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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/652,927	08/31/2000	Theodore W. Meyers		4367

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MARSHALL, O'TOOLE, GERSTEIN, MURRAY & BORUN
6300 SEARS TOWER
233 SOUTH WACKER DRIVE
CHICAGO, IL 60606-6402

EXAMINER

LUGO, CARLOS

ART UNIT	PAPER NUMBER
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3677

DATE MAILED: 10/08/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/652,927

Applicant(s)

MEYERS, THEODORE W.

Examiner

Carlos Lugo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 August 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 and 15-23 is/are pending in the application:
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 15-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 28 May 2002 is: a) ☒ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1. This Office Action is in response to Request for Reconsideration filed on August 7, 2003.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. **Claims 1,4,6 and 19 are rejected** under 35 U.S.C. 103(a) as being unpatentable over US Pat No 6,136,190 to Zoeller et al (Zoeller) in view of US Pat No 5,580,453 to Nurse ('453) and further in view of US Pat No 901,545 to Morrison.

Regarding claims 1 and 6, Zoeller discloses a tee (16) comprising a cylindrical main body portion (where 16 is pointing in Figure 4) defining a tubular opening (28) that is adapted to receive a filter (14) therein.

A cylindrical uppermost hub (29) is coaxially with the cylindrical main body portion. The uppermost hub includes an inner diameter greater than the diameter of the cylindrical main body portion.

An inlet/outlet port is in communication with the tubular opening. The inlet/outlet port includes an inlet/outlet hub (26), located at an open end of the port, having a diameter sized to receive a pipe. The diameter of the inlet/outlet hub is greater than the diameter of the cylindrical main body portion.

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However, Zoeller fails to disclose that the cylindrical main body portion is elongated and that the inlet/outlet hub receives a pipe of a first outer diameter or receive a pipe of a second outer diameter by the use of a reducer.

Nurse ('453) teaches that a tee having an elongated cylindrical main body portion (18) to adapt a large filter is known in the art.

Applicant is reminded that a change in the shape of a prior art device is a design consideration within the level of skill of one skilled in the art. In re Dailey, 357 F.2d 669, 149 USPQ 47 (CCPA 1966).

Morrison teaches that is known in the art to have a tee adapted to receive a pipe of a first or second outer diameter (by using a reducer as illustrated in Figure 8).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have an elongated cylindrical main body portion, as taught by Nurse ('453), and a device that helps to receive a first or a second outer diameter into the inlet/outlet hub, as taught by Morrison, into a tee as described by Zoeller, in order to adapt a bigger and larger filter and to adapt different pipes with different outer diameters.

As to claim 4, Zoeller illustrates that the inlet/outlet port includes a sweep portion arcing upwardly from the cylindrical main body portion toward a ring defined by the inlet/outlet hub. The sweep portion defines an opening in communication with the tubular opening and the inlet/outlet hub (Figure 4).

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As to claim 19, Zoeller illustrates that the outlet opening of the inlet/outlet port is located along a length between the lowermost end and the uppermost hub, but near to the uppermost hub.

4. **Claims 2,3,5,15-18 and 20-23 are rejected** under 35 U.S.C. 103(a) as being unpatentable over US Pat No 6,136,190 to Zoeller et al (Zoeller) in view of US Pat No 5,580,453 to Nurse ('453), in view of US Pat No 901,545 to Morrison and further in view of US Pat No 3,633,943 to Ramm.

Regarding claims 2,3,5,15 and 21-23, Zoeller, as modified by Nurse ('453) and Morrison, fails to disclose that the tee includes a first and second rib extending longitudinally along the elongated main body, that between the ribs is coextending seams, and that the main body portion has a wall thickness of about .075-.1 inches.

Ramm teaches that the use of reinforced ribs (36) along the main body portion and to have seams coextending with the first and the second ribs is known in the art.

Nurse ('453) teaches that the inner diameter of the main body portion could be 4,6 or 8 inches (Col. 3 Lines48-50). Therefore, if someone is designing a pipe system, you will know that for a pipe (PVC or the like) with an inner diameter of 4 inches, the wall thickness is about .237 inches.

Applicant is reminded that a change in the size of a prior art device is a design consideration within the skill of the art. In re Rose, 220 F.2d 459, 105 USPQ 237 (CCPA 1955).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have a main body with reinforcing ribs, as taught Ramm, into

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a tee as described by Zoeller, as modified by Nurse ('453) and Morrison, in order to reinforce to give more strength to the main body portion.

Also, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have a wall thickness of about .075-1 inch, in order to save in cost of manufacturing.

As to claims 16 and 20, Zoeller disclose the use of a filter (14) received in the tubular opening.

As to claim 17, Zoeller discloses that the inlet/outlet hub (26) receives a length of a pipe (Figure 1).

As to claim 18, Morrison teaches that is known in the art to have a tee adapted to receive a pipe of a first or second outer diameter (by using a reducer as illustrated in Figure 8).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have a device that helps to receive a first or a second outer diameter into the inlet/outlet hub, as taught by Morrison, into a tee as described by Zoeller, in order to adapt different pipes with different outer diameters.

Response to Amendment

5. Applicant's arguments filed on August 7, 2003 have been fully considered but they are not persuasive.

Regarding applicant's arguments that there is no motivation to combine the teachings of Nurse into the device as described by Zoeller (Page 2 Line 18 and

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Page 2 Line 1 of the affidavit), Zoeller, as modified by Nurse discloses the invention as claimed.

The fact that the main body is elongated is considered as a change in size or shape that will not affect the connection.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning (Page 3 Line 13), it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

As to applicant's arguments that the claim language of claim 1 does not require a reducer (Page 3 Line 18 and Page 3 Line 3 of the affidavit), the claim language of claim 1 does not establish that. Claim 1 recites "said inlet/outlet hub having a diameter sized as to receive a pipe of a first outer diameter and being adaptable to receive a pipe of a second outer diameter" in lines 8-11. It has been held that the recitation that an element is "adapted to" perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138. therefore, by using a reducer, as taught by Morrison, the inlet/outlet hub as described by Zoeller, as modified by Nurse, is adapted to accept different sizes of pipe.

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As to applicant's arguments that Ramm fails to disclose reinforcement ribs (Page 5 Line 1 and Page 3 Line 14), Ramm teaches that the use of reinforced ribs (36) along the main body portion and to have seams coextending with the first and the second ribs is known in the art.

The affidavit under 37 CFR 1.132 filed December 2, 2002 and in August 7, 2003 are insufficient to overcome the current prior art rejection of claims 1-6 and 15-23 as previously set forth.

Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carlos Lugo whose telephone number is 703-305-9747. The examiner can normally be reached on 9-6pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Judy Swann can be reached on 703-306-4115. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-5771.

October 3, 2003.

Carlos Lugo
Examiner
Art Unit 3677


Anthony Knight
Supervisory Patent Examiner
Group 3600